IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 6TH JULY 2007 / 15TH ASHADHA 1929

Bail Appl..No. 4075 of 2007()

---

CRIME 505/04 OF TIRUR POLICE STATION
CC.875/2004 of J.M.F.C.,TIRUR

.....

PETITIONER/2ND ACCUSED.

---

GAFOOR E.P.,S/O.HAMSA,
IBRAHIMINTE PURACKAL,VAKKADU,VETTOM,
TIRUR TALUK,MALAPPURAM DISTRICT.

BY ADV. SRI.K.P.MUJEEB

RESPONDENTS:

---

1. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

2. SUB INSPECTOR OF POLICE,
TIRUR POLICE STATION.

BY PUBLIC PROSECUTOR SRI.P.N. SUKUMARAN

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 06/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**R. BASANT, J.**

- - - - - - - - - - - - - - - - - - - - - -

B.A.No. 4075 of 2007

- - - - - - - - - - - - - - - - - - - - - -

Dated this the 6th day of July, 2007

**O R D E R**

Application for anticipatory bail. The petitioner faces indictment as the second accused for offences, inter alia, under Sections 324 and 506(ii) r/w. 34 I.P.C. Final report has already been filed. Cognizance has already been taken. The petitioner was enlarged on bail at the crime stage. But the petitioner could not appear before the learned Magistrate thereafter. Reckoning him as an absconding accused, the learned Magistrate has issued a warrant of arrest to procure the presence of the petitioner. According to the petitioner he is absolutely innocent. His absence was not wilful.

2. The learned counsel for the petitioner submits that the petitioner is willing to appear before the learned Magistrate. But he apprehends that his application for bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. It is in these circumstances prayed that appropriate directions may be issued to release the petitioner on bail on the date of surrender itself.

3. It is certainly for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider the application for bail to be filed by the petitioner when he surrenders before the learned Magistrate, on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued by this Court in the decision in **Alice George** v. **Dy.S.P. of Police** (2003 (1) KLT 339).

4. This application is accordingly dismissed. I may however hasten to observe that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass orders on merits, in accordance with law and expeditiously - on the date of surrender itself.

**(R. BASANT)**
Judge

tm